Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeals of the Maharani Indar Kunwar and Udit Narayan v. *Maharani Jaipal Kunwar* (*three Appeals and a Cross Appeal consolidated*) *from the Court of the Judicial Commissioner of Oude; delivered* 10*th March* 1888.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[Delivered by Lord Macnaghten.]

The question in these consolidated appeals turns mainly on the construction and effect of the will of the late Maharaja Sir Digbijai Singh. The parties to the contest are the two widows of the Maharaja, and an infant adopted by the senior widow. The litigation was commenced by the junior widow, who challenged the validity of the adoption and claimed joint proprietary possession of the immoveable property and one half share of the moveable property of the late Maharaja, of which the senior widow had taken sole possession. The junior widow founded her claim on the contention that the expression "Maharani Sahiba" was used in the will as a collective term comprehending both widows. The senior widow maintained that it applied to her alone. The District Court held that the

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junior widow's claim was not well founded, and that she was only entitled to maintenance under the will. The Judicial Commissioner, on the other hand, held that the junior widow was included in the expression "Maharani Sahiba." He treated the adoption as valid. He held that the moveables followed the raj, which was impartible. But he considered that the junior widow was entitled to equal beneficial enjoyment with the senior widow until the Government should take action by assuming the management of the estate in accordance with the request contained in the will. In the meantime the management of the estate was to remain in the hands of the senior widow. The conclusion of the Judicial Commissioner has not given satisfaction to any of the parties to the litigation. The senior widow and the adopted son have both appealed from the whole decree. Up to a certain point the case of the adopted son is the same as that of the senior widow. They differ only in their views as to the consequence of the adoption and the present rights conferred thereby—matters which cannot come into question in this suit. The junior widow has also appealed. She appeals from the decree so far as it holds the adoption valid and the moveables impartible, and so far as it commits the management of the estate to the senior widow.

In order to construe the will, it is necessary to understand the testator's position. The testator was one of the few Oudh chieftains who remained loyal to the British Government during the troubles of 1857 and 1858. At that time he was Raja of Bulrampur. His services were acknowledged by the Government. He was excepted by name from the Proclamation which confiscated proprietary rights in the soil of Oudh, and named first in the exception. He received the title of Maharaja and large grants of land.

He seems to have been a person of considerable intelligence. As President of the Oudh Taluqdars' Association, he took an active part in framing the Oudh Estates Act, 1869. He was also for a time, and at the time when that Act passed, Member of the Legislative Council of India. His name was entered in Lists Nos. II. and V. mentioned in Section 8 of the Act. List No. II. is "A List of the Taluqdars "whose estates according to the custom of the "family on and before the 13th day of February "1856 ordinarily devolved upon a single heir." List No. V. is "A List of Grantees to whom "sanads or grants may have been or may be "given or made by the British Government up "to the date fixed for the closing of such list, "declaring that the succession to the estates "comprised therein shall thereafter be regulated "by the rule of primogeniture." On both those lists his name remained during his life.

In 1860 the Maharaja married the Maharani Indar Kunwar, who is generally referred to in these proceedings as the senior widow. In July 1877 he married the Maharani Jaipal Kunwar, who is the Plaintiff in the suit.

On the 15th of March 1878 the Maharaja executed his will. The Maharani Indar Kunwar was then 41, and the younger Maharani 19. The will was deposited in the Registration Office of Lucknow, but owing to a misapprehension of the law which seems to have been prevalent at the time it was not duly registered under the Act of 1869. It is evident, however, that it was the intention of the Maharaja to comply with all the formalities required to give full effect to the dispositions of his will.

On the 27th of May 1882 the Maharaja died, leaving his two wives surviving. He died without legitimate issue, and without having

adopted a son in his lifetime. Besides his taluqdari estates he left non-taluqdari property and moveables of considerable value.

Their Lordships now proceed to consider the testator's will. The effect of non-registration in the view which their Lordships take of the true construction of the will will be considered afterwards.

The scheme of the will, apart from the bequest which has given rise to the present controversy, is clear and consistent throughout. In the various contingencies which it contemplates the will shows no little thought and consideration. The testator observes that at the time of writing his will he was childless, but not without hope of issue—when all hope of issue became lost he might adopt a son, and he proposes to do so if opportunity should occur—after adoption a son might be born to him. These events might happen in his lifetime. After his death, in default of issue natural born or adopted by himself he authorizes the adoption of a son. The son so adopted might die in minority, and then there would be occasion for a second adoption; lastly, in default of issue, and in default of an adopted son, it was his wish that his property should devolve on the person lawfully entitled according to the custom of the riasat. The testator provides for all these different events. And in each case he is careful to repeat and emphasise his wish that the estate shall devolve in its integrity, and that his successor, whoever he may be, shall like himself be seated on the guddee, the owner of the entire riasat, and of all the property belonging to it, moveable and immoveable. So far there seems to be the most anxious desire on the part of the testator that the principle of succession which had prevailed in his family for

generations, and which was recognized in the taluqdari lists, the rule of single heirship—one owner at one time—should be maintained unimpaired.

Turning now to the passages of disputed meaning, it is to be observed that the expression Maharani Sahiba occurs there in connection with three different purposes which present themselves to the mind of the testator. In the first place, it is to be found in the bequest of the estate contingent on the testator leaving no natural born or adopted son. In that case the testator declares his will as follows,—"Let the Maharani "Sahiba after me be during lifetime the owner "of the entire riasat, and of the property "moveable and immoveable." Before the word translated "lifetime" there is in the original a possessive pronoun, but it may be translated either "her" or "their," and so it throws no light on the question. Maharani is a Hindi word, signifying the wife of a Maharaja; Sahiba is Arabic for "lady." Both words are in the singular number. They are however throughout used as governing verbs in the plural. No stress was laid on this circumstance. It was not disputed that the plural verb might properly be used out of courtesy, as a mark of respect. The use of the word malik, "owner," in the singular is more significant. The learned Counsel for the junior widow suggested that the word was used like an adjective, and that it would not be in accordance with the idiom in which the will was written to use the plural, malikan. But no proof was offered in support of this suggestion. And though the use of the word malik in the singular is certainly not conclusive, it is not without weight, especially as it is the same word that is used by the testator in reference to the position of the single heir,

on whom, whether a natural born son, or an adopted son, or the heir according to the custom of the riasat, the property was to devolve in its entirety. On the whole, their Lordships are of opinion that the language of the bequest rather points to the exclusive possession of one than to the joint possession of two.

A similar observation applies to the provisions relating to adoption after the testator's death. "There is to the Maharani Sahiba full authority "to select and within two years to adopt" a male child of the testator's family. In the event of the child so adopted dying in his minority, "again there is authority to the "Maharani Sahiba to make a second adoption." The testator expresses a wish that "Government "may have a care that . . . a son be adopted "by the Maharani Sahiba within two years." "Should, peradventure, the Maharani Sahiba "die without adopting any son," the estate is to go to the person lawfully entitled according to the custom of the riasat. The nature of the case seems to require that the donee of the power should be one individual. The language rather points in that direction. If the testator intended to commit the selection and adoption to his two widows jointly, it is certainly singular that no provision should be made for the not improbable event of their disagreeing. If he intended to give the power to the survivor after the death of one, it would have been more natural that he should have said so. It was urged that a joint power of adoption is in accordance with Hindoo notions, that in some parts of India, when adoption has not been forbidden by a husband, the power falls to the widows jointly, and that the law provides for the case of a disagreement. That is true in Western India, but there is no evidence that

such a custom is known in Oudh. It seems hardly applicable to the case of a family where the custom is single heirship and not joint possession.

The third passage, where the expression occurs, is in the clause relating to the provision to be made for the administration of the estate under the Court of Wards during the minority of an infant heir. The testator expresses a wish that in the management there should be associated "the district officer and the "Maharani Sahiba, and some agent who is fit "and a well-wisher of the riasat, . . . in "order that the settlement of the riasat, and "welfare of the ryots may prosper." It is difficult to conceive that a man of the testator's experience and knowledge of the world could have proposed that his two widows should both sit on this council, or that he could have seriously imagined that the settlement of the riasat and the welfare of the ryots would be promoted by an arrangement so calculated to foster jealousies and encourage intrigues.

Though no one of these passages taken by itself may be conclusive upon the question, it seems to their Lordships that they all point in the same direction, and that taken together they lead almost irresistibly to the inference that one person, and one person only, was intended by the designation Maharani Sahiba where the meaning is in dispute.

This inference is much strengthened by the passage in the will where the testator provides maintenance for his widows. There he uses the same words, "Maharani Sahiba," but to prevent any mistake he adds the word "two," and speaks of "the two Maharani Sahiba." It was said that in this passage the word "two" was added because the intention was that the allow-

ance should not be joint, but that each should have a separate share. But it is to be observed that this explanation hardly accounts for the use of the word "two" in the first sentence, where the allowance which is afterwards divided between the two ladies is lumped together as one sum of Rs. 55,000.

Again, in that passage in which the testator speaks of his hopes of issue where he uses the expression Maharani Sahiba, he does not leave the expression unexplained.

We find then that in connection with the three purposes—of succession to the estate, selection and adoption of an heir, and representation on an administrative council during the heir's minority,—in each of which a great noble in the testator's position might be expected to have in view one person, and one person only, the testator uses the expression Maharani Sahiba without qualification and without addition. In the two passages in which he must have had both his wives in view, in connection with the possibility of issue and in connection with the usual provision for widowhood, he qualifies the words Maharani Sahiba by other words which leave no doubt as to his meaning.

It is not disputed that, if one person only is intended, that person must be the senior widow, who was, for some years before the Maharaja's marriage with the Plaintiff, the only person entitled to the style and dignity of Maharani Sahiba, and who after that marriage still retained the pre-eminence of an elder wife.

One argument which was urged on behalf of the junior widow remains to be noticed. It was founded on the maintenance clause. It was argued that, according to the true construction of this clause, having regard to its language and its position in the will, no allowance by way of

maintenance was payable until an adoption was made. It was said too that it would be absurd to give an allowance out of the income of a property to a person entitled to a life estate in the whole. Starting from this position, the learned Counsel for the junior widow contended that, if the Appellants were right, the result would be that there would be no provision for their client, so long as the senior widow chose to keep the estate. But nothing, they said, was more unlikely than that the testator could have intended to leave his favourite wife, as they termed the junior widow, either dependent on the miserable pittance to which she would be entitled under the Act of 1869, or a pensioner on the bounty of a jealous rival, especially considering that both widows were ultimately to be placed almost on an equality as regards their maintenance. The only way to escape from a conclusion so improbable was to hold that the testator intended to give a joint life estate to both widows.

There would be much force in this argument if it rested on a sound foundation. But their Lordships think that it depends upon an erroneous construction of the provision for maintenance. That provision is no doubt apparently bound up with the clause which deals with the expenses of the riasat during the minority of an infant heir. But their Lordships consider that, upon the true construction of the will, it is a substantive and independent provision, and that maintenance runs from the death of the testator. There is no difficulty in the concurrent gifts to the senior widow of an allowance for maintenance and a life estate in the whole property. The life estate was not intended to continue at farthest beyond two years, and the duty of the senior widow would be to adopt as soon as possible. So long as the life estate might last, her allowance for

maintenance would of course merge in the life estate.

Their Lordships desire to add that, in their opinion, this is not a case in which it would be proper to admit extrinsic evidence of the testator's intention. It is rather a case in which the difficulty created by the particular expression ought to be solved by adopting the construction which bespeaks a reasonable and probable intention, and rejecting that which would indicate an intention unreasonable, capricious, and inconsistent with the testator's views, as evidenced by his conduct and by the dispositions of his will which are not open to controversy.

The rule is laid down by Lord Cranworth in words which have often been cited with approval, "When, by acting on one interpretation "of the words used, we are driven to the con- "clusion that the person using them is acting "capriciously, without any intelligible motive, "contrary to the ordinary mode in which men "in general act in similar cases, then, if the "language admits of two constructions, we may "reasonably and properly adopt that which "avoids these anomalies, even though the con- "struction adopted is not the most gram- "matically accurate," Abbott *v.* Middleton, 7 H. L. C., 89. Here the argument from reasonable and probable intention is in favour of the construction which is rather the more obvious of the two.

Their Lordships have already expressed their view as to the right of the junior widow to maintenance from the testator's death. They think that the maintenance is payable out of the whole estate, taluqdari as well as non-taluqdari, notwithstanding the non-registration of the will. If the Maharaja had died intestate the junior widow would have succeeded to a life estate in the taluqdari property expectant on the deter-

mination of the life estate of the first married widow, but subject to be defeated by an adoption made by the first married widow, with the consent in writing of her husband. It seems impossible to say that that is not an interest in the estate within the meaning of section 13, sub-section 1 of the Act of 1869. Their Lordships do not think it necessary to express any further opinion on the construction of this most difficult section.

Although their Lordships hold that the claim put forward by the junior widow is not well founded, and that the order of the Judicial Commissioner granting relief on the footing of that claim must be discharged, they think it will be proper to make a declaration as to the allowance for maintenance to which they consider the junior widow entitled under the will.

As regards costs, the difficulty has been created by the testator himself, and under the circumstances, having regard to the position of the parties, their Lordships think it right that the order of the Judicial Commissioner as to costs should not be disturbed, and that the costs incurred in the execution proceedings in the Court of the Judicial Commissioner and the costs of all parties in these consolidated appeals should be paid as between solicitor and client out of the testator's estate. The appeal in the execution proceedings does not call for any observation beyond this that the appeal seems to have been necessary, and that no blame of any sort is to be attributed to any of the parties who appeared before their Lordships on the application for special leave to appeal. The order of the 22nd June 1886 will be discharged.

Their Lordships will therefore humbly advise Her Majesty that an order be made to the following effect:—Discharge the order of the Judicial Commissioner, except so far as it provides for costs. And in lieu of the decree of

the District Court and of so much of the order of the Judicial Commissioner as is discharged, Declare that according to the true construction of the will of the testator the junior widow is entitled only to an annuity during her life of Rs. 25,000, commencing from the day of the testator's death, and that such annuity is charged upon and payable out of the income of the entirety of the testator's estate. Discharge the order of the 22nd June 1886. Direct that the costs of all parties incurred in the execution proceedings in the Judicial Commissioner's Court be taxed as between solicitor and client, and paid out of the testator's estate.

The costs of all parties of these consolidated appeals will also be taxed as between solicitor and client, and paid out of the testator's estate.